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Supreme Court of the United States

OCTOBER TERM, 1954.

No. 11 Original

THE STATE OF MISSISSIPPI,
Complainant,

versus

THE STATE OF LOUISIANA,
Defendant.

ANSWER OF ELEANOR R. WOOLGAR AND IRMA L. RICHARDS, MOVANTS IN INTERVENTION, TO THE MOTION OF THE STATE OF MISSISSIPPI, AND THE STATE OF LOUISIANA TO REJECT AND DISMISS THEIR MOTION OF INTERVENTION.

L. BRYAN DABNEY,
Of the law firm of
DABNEY & DABNEY, of
Vicksburg, Mississippi,
Counsel for Eleanor R.
Woolgar and Irma L.
Richards.

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To the Honorable Earl Warren, Chief Justice of the Supreme Court of the United States of America and Associate Justices:

Now come Eleanor R. Woolgar and Irma L. Richards, both adult residents and citizens of the State of Indiana, and in this their answer to the Motion of the State of

Mississippi, concurred in by the State of Louisiana, to reject and dismiss their Motion of Intervention, show to this Honorable Court, as follows:

I:

Answering paragraph I of the Motion they emphatically deny that this is a bona-fide suit between the states of Mississippi and Louisiana; admit that these states are sister states in the federal union, but deny that they are sovereign with relation to the Constitution of the United States and the *Decisions* of the United States Supreme Court which are the *supreme law* of the land, the laws of any state or the decisions of her highest court to the contrary notwithstanding (and their counsel suggest to opposing counsel the propriety of taking a refresher course in American constitutional law by reading word for word Webster's Reply to Hayne on Foote's Resolution in the United States Senate in 1832, as well as Andrew Jackson's Nullification Proclamation;) and they deny that the instant suit was filed for the purpose of bona-fide fixing a boundary line within the designated seven or eight mile course; and again they deny that these states are sovereign with relation to the Constitution of the United States and the Decisions of the United States Supreme Court; and they further emphatically deny that this instant suit had any right to be instituted within the original jurisdiction of the United States Supreme Court pursuant to Article III, Section II, 2, of the Constitution of the United States, as will hereafter be shown in this Answer.

II.

They deny all and singular the allegations in paragraph II of the Motion; and especially do they reprobate and deny the allegation that any state in this federal union is sovereign with relation to the Constitution of the United States and the Decisions of the Un ted States Supreme Court; as will hereafter be shown in this Answer.

III.

They deny all and singular the allegations set forth in paragraph III of the Motion to the effect that the Motion of Intervention is in direct contravention and conflict with the provisions of the Eleventh Amendment to the Constitution of the United States of America; as will hereafter be shown in this Answer.

The Motion filed by the State of Mississippi, and concurred in by the State of Louisiana, travels over the same ground as the Original Petition heretofore filed in said cause. This Motion amply confirms the conclusion heretofore arrived at, that these two states are merely "fronts" by which private property owners are endeavoring to "establish" a boundary line, along the disputed section, to suit their convenience and selfish interests, and at the expense, and destruction of legal rights of these movants, when in fact a satisfactory boundary line already exists between the two states which conclusively shows that the lands of these Movants, Mesdames Woolgar and Richards, are clearly within the confines of the State of Louisiana, as shown by the exhibits hereinafter specially referred to; and that the prime purpose of said suit is

not to have the boundary adjudicated by this Honorable Court to settle an honest difference of opinion between sister states, but for the purpose of marking the boundary in such a fashion as will redound to the special benefit of private interests, and who are endavoring to use the instrumentalities of the courts and the protecting aegis of the federal constitution in the furtherance of their selfish scheme.

The empty platitudes appearing in the Motion can meet with no sympathizing response in the forums of this country, because it was never the intention of the founding fathers of the constitution that any of its provisions were available as a shield behind which one could hide and operate with impunity.

It is, of course, an elemental proposition that the original jurisdiction of this Honorable Court can only be invoked in a bona-fide action of one state against another. With this we are in hearty accord. But we insist, and we have behind us an unbroken array of authority, that it must not only appear, but must exist as a fact, that it is a bona-fide action between sister states, and that it is not brought for the benefit of private individuals, and that no private interests are lurking in the background to reap the full benefit of an action obstensibly brought by one state against another; but in reality this suit is nothing more or less, than a state acting as a "front" or next friend of private citizens and interests; and all of which precludes this Honorable Court taking original jurisdiction.

A hearing took place in Vicksburg, Mississippi, this past July before Honorable D. K. McKamy, Special

Master, and we are prepared ot testify as to the marked ability, dignity and impartiality with which that gentleman presided over the hearing, but he naturally had no control over the mechanics of this hearing or the introduction of testimony, all of which was left to the representatives of the respective states; nor could he be expected to know what had been going on for the past twenty-four years in state and federal courts, or the suits yet pending for decision in federal and state courts at the present time, relative to lands in this disputed section. He was concerned only with the immediate hearing.

At the Special Master's hearing only those witnesses especially desired and called by either of the states were permitted to testify, and with nearly perfect unanimity both states were in more or less agreement.

Not as a participant, but as an observer of these proceedings we were visibly impressed with the unanimity existing between the representatives of the two states, and one could hardly believe or realize that they were contestants and litigants in anything in particular, everything appearing to be by consent with hardly an objection rippling along the surface; in fact, it did so rival a pastoral scene by Corot. And we also noticed that all of the counsel representing the state of Mississippi were past or present counsel in suits now pending in the courts here and in Louisiana; some of the pending suits even now are awaiting a decision of the Supreme Court in the instant suit, should this Honorable Court not dismiss this whole proceeding as not warranting the application of its original jurisdiction, *as we claim it does not.* The private

counsel of Learned, Hunter, et al., had complete control and whether or not they displayed the labels of private counsel or as "Special" or "Associate" (whatever this is) Attorney Generals, their identification with past and present litigation concerning the land within the course of this boundary "dispute" was complete. We, however, notice this one difference since the appearance of the instant Motion to Reject and Dismiss, that there is now engaged on behalf of the State of Mississippi an entire commissioned personnel, and that there now appear no "buck" privates to perform their devoirs for that state, but they now step out of the habiliments of private counsel, and come forth to do battle arrayed in the raiment of Assistant Attorney Generals and holding aloft the mace of authority scatter pontifical expressions. We trust this Honorable Court will inquire into their transposition.

The Mississippi River flows some five hundred miles in its course down the western boundary of Mississippi, from the Tennessee to the Louisiana line. Its course is marked by innumerable twists, turns, bends, cut-offs, old river beds and sloughs, and these sister states instead of asking for a complete re-alignment of the whole boundary line, instead as next friends of these private interests, seek the interposition of this Honorable Court to "tailor the garment to fit the particular needs" of these private interests, in a course of some seven or eight miles.

We here renew the authorities cited in our Motion of Intervention, and Answer of Intervening Co-Defendants.

They file as Exhibit "A" hereto a map in color showing the seven stages of the boundary line through said course, for the periods: 1828-1830; 1863; 1904; 1910; 1916; 1927 and 1942 to the present time; and ask that same be made and taken as a part of this Answer as much so as if copied in full herein.

They file as Exhibit "B" hereto a Map of the Mississippi River Commission dated 1883, showing erroneous superimposed lines unauthorized and undated, and not originally on said map, and ask that same be made and taken as a part of this Answer as much so as if copied in full herein.

They file as Exhibit "C" hereto the original letter of Dabney & Dabney, addressed to Mr. John P. Coleman, Attorney General, of Mississippi, under date of July 10, 1954, and ask that same be made and taken as a part of this Answer as much so as if copied in full herein.

They show further that they are entitled to have their Motion of Intervention sustained and Answer therein filed; or in the alternative that their counsel be permitted to appear therein as *amicus curiae;* and

1. They deny that the States of Mississippi and Louisiana have any legal grounds upon which to pray that the Motion to Intervene should be rejected and denied; but instead show that it should be sustained and accepted; and

2. That said Motion to Reject and Dismiss should be overruled.

The original jurisdiction of the Supreme Court cannot be resorted to in the name of state when suit is in reality for the benefit of particular individuals. Oklahoma ex rel. *Johnson v. Cook*, 304 U. S. 387.

And Chief Justice Hughes in the case *supra* had this to say; in the opinion of the Court relative to this question of original jurisdiction and referring to *Florida v. Mellon*, 273 U. S. 12; *New Hampshire v. Louisiana; New York v. Louisiana*, 108 U. S. 76:

> "To bring a case within that jurisdiction, it is not enough that a state is plaintiff; nor is it enough that a state has acquired the legal title to a cause of action against the defendant, where the recovery is sought for the benefit of another who is the real party in interest. . . .The underlying point was that in determining the scope of this Court's original jurisdiction under Clause 2 of S. 2 of Article 3 of the Constitution, we must look beyond the mere legal title of the complainant state to the cause of action asserted and to the nature of the state's interest."

And these decisions apply with equal force in the instant case.

Respectfully submitted,

ELEANOR R. WOOLGAR AND
IRMA L. RICHARDS,
By L. BRYAN DABNEY, of the law
firm of DABNEY & DABNEY,
of Vicksburg, Mississippi,
Counsel.

CERTIFICATE.

This is to certify that copies of the foregoing answer have been served on the Attorney General of the State of Mississippi, and the Attorney General of the State of Louisiana.

Vicksburg, Mississippi, the 27th day of September, 1954.

L. BRYAN DABNEY, of the law firm of DABNEY & DABNEY, of Vicksburg, Mississippi, Counsel for ELEANOR R. WOOLGAR AND IRMA L. RICHARDS.